

MAIL BRANCH
92-33

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of

CENTRAL FLORIDA EDUCATIONAL FOUNDATION,
INC.
Union Park, Florida

et al., including the application of

HISPANIC BROADCAST SYSTEM, INC.
Lake Mary, FL
For Construction Permit, New
Noncommercial, Educational FM Stations

MM Docket No. 92-33
File No. BPED-881207MA

File No. BPED-891128ME

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To: Administrative Law Judge Edward J. Kuhlmann

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AUG 21 1992

Federal Communications Commission
Office of the Secretary

REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

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Counsel for Hispanic Broadcast System, Inc.

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REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mass Media Bureau's Findings

1. The Mass Media Bureau states in its findings of fact and conclusions of law, at para. 2, that "Central Florida is decisively favored under priority (2) since it will provide a second noncommercial educational FM service to 184,775 persons, which is 45,984 (or 33%) more persons than the next best proposal, Hispanic's." The Bureau found that none of the applicants was favored under any other criteria of the 307(b) analysis.

2. Hispanic essentially concurs with the Bureau's finding that the only area wherein Central Florida is entitled to a preference is that of second noncommercial educational FM service. The Bureau stated that "there is no evidence of record as to whether any of the applicants will provide a first local transmission service." (Bureau Findings at para. 2). Hispanic agrees with this statement. In the event the Presiding Judge determines that findings should be made on this question, official notice is requested of the fact that there is no station licensed to Lake Mary, Florida and that the Hispanic proposal would be providing a first local transmission service to its community of license.

3. Hispanic disagrees that the second service advantage proposed by Central Florida should be considered dispositive for the reasons set forth in Hispanic's proposed findings at para. 43. As stated therein "[b]ecause Central Florida's programming is limited to "Bible-based" programming, it will not serve the

general population and thus the second service advantage is illusory."

Central Florida's Findings

4. In its findings, at para. 30, Central Florida likewise argues that it should be granted a dispositive 307(b) preference. However, as discussed above, the limitation on Central Florida's programming to "Bible-based" material precludes such a finding. While undersigned counsel would be happy if all programming in the country were voluntarily limited to Bible-based programming, it would be unconstitutional for the government to grant a preference to an applicant which has so restricted its programming. While the First Amendment precludes discrimination against religious groups, it also precludes discrimination on behalf of religious groups.

5. In the instant case, Central Florida is seeking a "dispositive preference" for the broadcast service which it proposes to provide. However, that service is, by virtue of the applicant's Articles of Incorporation, restricted to religious programming that is "Bible-based." Consequently, the award of a preference in such circumstances is tantamount to a government-sanctioned promotion of the religious beliefs of Central Florida.

6. This is not to say that Central Florida should be denied a preference simply because its principals hold a certain religious view. For example, it would be improper for a local school board to refuse to hire "Christians" or "Jews" simply because they hold certain personal religious beliefs. Such an action would constitute religious discrimination. However, if the

individual seeking employment stated that he would provide only "Bible-based" instruction, the school board would appear justified in refusing to hire this individual since it is not the purpose of the school system to promote "Bible-based" beliefs. It is one thing for a person to hold to a belief in "Creation" versus "Evolution," it is quite another thing for the State to provide such a person with a platform to advance his particular beliefs to the exclusion of all other beliefs.

7. Likewise, it is one thing for the Commission to grant a preference to an entity whose principals are Christians or Jews. However, it is quite another thing to grant a "service preference" to an entity such as Central Florida which is restricted by its charter from carrying any programming that is not Bible-based. This would be tantamount to providing a platform to Central Florida to advance its Bible-based beliefs to the exclusion of all other beliefs. This is clearly precluded by the establishment clause of the U.S. Constitution. It is also contrary to the intent of 307(b) of the Communications Act which is designed to promote the "fair, efficient and equitable" distribution of radio services.

Other Matters

8. Hispanic has stated that it favors an imposed share-time arrangement. Southwest Florida Community Radio, Inc. stated in its proposed findings, at p. 26, that it favors an imposed share-time arrangement. Bible Broadcasting Network, Inc. has also stated (at para. 44-46 of its findings) that it supports an imposed share-time arrangement. Since Central Florida failed to

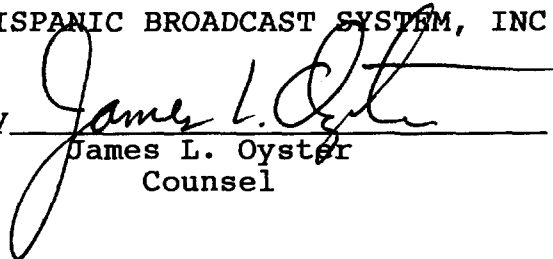
submit evidence on this issue, there is no basis for finding that a share-time arrangement would not serve the public interest. The only evidence of record supports an imposed share-time arrangement, and the Presiding Judge should rule that an imposed share-time arrangement would serve the public interest.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
Rt. 1, Box 203A
Castleton, VA 22716
(703) 937-4800

HISPANIC BROADCAST SYSTEM, INC.

By


James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing REPLY FINDINGS by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 21st day of August, 1992, to the following:

James Shook, Esq.
Hearing Branch, Enforcement Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
2033 M Street, N.W.
Suite 207
Washington, D.C. 20036

A. Wray Fitch, III
Gammon & Grange
Seventh Floor
8280 Greensboro Dr.
McLean, VA 22102-3807

Joseph E. Dunne, III
May & Dunne
1000 Thomas Jefferson Street, N.W.
Suite 520
Washington, D.C. 20007